

Department of Social Services Division of Licensing Programs STANDARD OPERATING PROCEDURE	TITLE: ADVERSE ENFORCEMENT ACTIONS	PROCEDURE NUMBER SOP-501
		EFFECTIVE DATE: May 20, 2005
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501-1.0 PURPOSE

To establish operating procedures for implementing adverse enforcement actions in the licensing offices and efficiently processing enforcement actions in the central office.

501-2.0 SCOPE

This standard operating procedure applies to all adverse enforcement actions initiated or processed by Division of Licensing Programs (DOLP) staff.

501-3.0 DEFINITIONS

Adverse Enforcement: Imposition of sanctions or actions by the commissioner or the director of the Division for providers that violate laws and/or regulations in ways that negatively impact the health, safety, or welfare of children or adults in the care of facilities regulated by the Division of Licensing Programs (DOLP).

DOLPHIN (Division Of Licensing Programs Help and Information Network): The Division's data system that manages information about applicants and licensed providers and serves as a tool for the work of licensing staff.

Injunction: A circuit court action ordering cessation of illegal or harmful activity. Used in licensing to refer to the Division's efforts to close a facility that is in serious violation of statute or standards (or to suppress an illegally operating facility).

Licensing representative: This usually refers to the staff delegated to provide ongoing regulatory oversight for a facility by the appropriate licensing office or unit. With proper designation by the licensing administrator or division management, however, staffs conducting such regulatory activities may be: staffs who perform similar functions for other facilities or licensing offices; a member of the division's central staff; or, a non-VDSS employee approved by the commissioner or division director.

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Sanction Letter: A written communication through which the Division notifies a facility/program that sanctions are imposed because of non-compliance with standards.

501-4.0 PROCEDURES

The Division's licensing offices shall identify serious or repeated violations of licensing standards that may warrant sanctions and injunctions. The central office shall review adverse enforcement action requests from licensing offices and issue sanctions to facilities/programs when warranted. The central office shall also request injunctions, following requests from licensing offices, when immediate action is necessary to protect the adults or children in a facility/program.

501-4.1 Identifying the Need and Submitting Requests for Adverse Enforcement Actions:

1. A licensing representative who observes regulation or statute violations which indicate an adverse impact on the health, safety, or welfare of adults or children in care shall consider recommending that an adverse enforcement action be imposed on the facility/program.
2. The licensing representative and the licensing administrator shall evaluate whether there is a need for an adverse enforcement action and, if so, complete the *Sanction Recommendation Memorandum* (Appendix A).

NOTE: No sanction can be issued solely on the basis of a violation that occurred in a previous licensing period, nor can it be issued against a licensed facility for having operated in the past without a license.

3. The licensing representative and the licensing administrator shall determine which of the following sanction(s) to recommend:
 - a. Revocation of license
 - b. Denial of application for new or renewed license
 - c. Probation

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- d. Reduction of capacity
- e. Prohibition on new admissions
- f. Posting of notice of sanction
- g. Mandated training
- h. Civil penalty
- i. Requiring licensees to contact parents/guardians about health and safety violations
- j. Termination of public funding

4. The licensing administrator shall forward the completed *Sanction Recommendation Memorandum*, with all documents supporting the recommendation, to the central office by inter-office mail.
5. The licensing administrator shall make a notation in DOLPHIN that a sanction has been requested.
6. The licensing representative or the licensing administrator shall notify the adverse enforcement consultant immediately upon receipt of any information that might affect a pending adverse enforcement action.

501-4.2 Processing Requests for Sanction Actions:

1. The adverse enforcement tech shall log each request for an adverse enforcement action in the adverse enforcement database and notebook.
2. The adverse enforcement tech shall set up a hard copy file in the following format:
 - a. Tracking sheet and *Sanction Recommendation Memorandum* on left
 - b. Supporting documentation on left
 - c. Labeled by facility name, file number, region, and date received

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3. The adverse enforcement consultant shall process the request for an adverse enforcement action by:
 - a. Analyzing the request from the *Sanction Recommendation Memorandum* to ensure consistency with the Division's principles
 - b. Conferring as needed with other consultants, licensing representatives, and administrators
 - c. Drafting a sanction letter and placing it on the W: drive in the Licensing Operations. The sanction letter shall include:
 - A list and description of the standards violated by the facility/program
 - Clear statements about how the standard(s) was not met
 - References to background information that may show a consistent pattern of violations by a facility/program in a particular area
 - An indication of the appropriate duration, if applicable, for the recommended sanction
 - d. Titling the MS Word file according to naming conventions of the Adverse Enforcement section of the Licensing Operations folder on the W: drive
 - e. Transmitting the sanction letter to the licensing administrator and licensing representative for approval
 - f. Placing the draft letter on the right side of the hard copy file
 - g. Returning the draft copy and file to the adverse enforcement tech
4. The adverse enforcement tech shall check the document for errors in typing, format, and grammar, and then forward the letter and the file to the director's office for review.

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5. The director of the Division shall review the sanction letter and supporting materials and make any suggestions for changes in content or format to the adverse enforcement tech.

NOTE: The adverse enforcement consultant shall send the sanction letter to the licensing administrator for review/approval if any substantive changes are made by the director.

6. The adverse enforcement tech shall prepare the final copy of the letter on department letterhead, integrating any changes made by the director, then deliver to the director's office for final signature.

NOTE: For civil penalties, which must be approved by the commissioner of the Department, the adverse enforcement tech shall also attach the yellow cover sheet ("Exec. Sec.") and forward the entire file.

7. The director shall review and sign the sanction letter, then return it to the adverse enforcement tech for distribution.

NOTE: For civil penalties, the director's office shall forward the sanction letter with attached yellow cover sheet ("Exec. Sec.") to the commissioner for review and signature. If the civil penalty letter is signed and returned by the commissioner, the director's office shall forward it to the adverse enforcement tech for distribution.

8. The adverse enforcement tech shall distribute the approved sanction letter by certified mail to the facility/program, log in the adverse enforcement database, and notify the adverse enforcement consultant, licensing administrator, and licensing representative that the letter has been sent.
9. The adverse enforcement consultant shall enter the decision about the sanction(s) into DOLPHIN.

501-4.3

Case Closure:

1. The facility/program shall have 15 days from receipt of the sanction letter to appeal the adverse enforcement action decision.

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- a. The adverse enforcement tech shall notify the licensing administrator and licensing representative and make a log in the adverse enforcement database once the return receipt has arrived verifying delivery of the sanction letter.
- b. The licensing office shall direct the facility/program to submit a response in writing to the central office if the facility/program orally expresses a desire to appeal an adverse enforcement action.

NOTE: See SOP-502 for staff policies and procedures relating to appeals of adverse enforcement actions.

2. If the decision is not appealed, the adverse enforcement tech shall close the file on the adverse enforcement action 30 days after the facility/program signs the return receipt, indicating that it received the sanction letter.
 - a. The adverse enforcement tech shall record the effective date of the sanction and notify the licensing administrator that the decision is final.
 - b. If the decision is appealed, the Division shall not close the case until after the final order has been issued, with appropriate notices sent to all parties.
3. The adverse enforcement consultant shall enter the final decision with the applicable effective date into DOLPHIN.

501-4.4 Requests for Injunction:

1. The licensing administrator shall send a request for an injunction to the central office by fax or email and include:
 - a. A list of the standards violated by the facility/program and/or the reason an unlicensed facility is subject to licensure
 - b. Statements about how the standard(s) was violated and why the circumstances necessitate immediate action through an injunction
 - c. References to background information that may show a consistent pattern of violations by the facility/program

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NOTE: No sanction can be issued solely on the basis of a violation that occurred in a previous licensing period. Also, a petition for injunction against a currently licensed facility must be preceded by a denial or revocation action.

2. The licensing administrator shall send by inter-office mail all supporting documents to the adverse enforcement tech as soon as possible following the initial request.
3. The licensing administrator shall make a notation in DOLPHIN that a sanction has been requested.
4. The adverse enforcement tech shall log the information and create a file using the procedures in 501-4.3.1 & 501-4.3.2.
5. The adverse enforcement consultant shall process the injunction request by:
 - a. Reviewing the information submitted by licensing administrator
 - b. Conferring as needed with other consultants, licensing representatives, and administrators to ensure that an injunction is needed
 - c. Drafting the injunction memo (in MS Word) to be sent by the director of the Division to the commissioner of the Department
 - d. Titling the MS Word file according to naming conventions of the Adverse Enforcement section of the Licensing Operations folder on the W: drive
 - e. Transmitting by email the injunction memo to the licensing administrator and licensing representative for review and approval
 - f. Forwarding the memo to the adverse enforcement tech
6. The adverse enforcement tech shall:
 - a. Check the document for errors in typing, format, and grammar

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b. Forward the memo and all relevant information to the director's office for review

7. The adverse enforcement consultant shall enter the decision about the injunction(s) into DOLPHIN.
8. The director of the Division shall review the injunction letter and supporting materials, then send to the commissioner with the yellow cover sheet ("Exec. Sec.") for approval.
9. The adverse enforcement tech shall fax the injunction request to the Office the Attorney General and to the licensing administrator once it has been signed and returned from the commissioner's office.
10. The adverse enforcement consultant shall enter the commissioner's decision with the applicable effective date into DOLPHIN.

501-5.0 AUTHORITY

Code of Virginia, Title 63.2-1709; 22 VAC 40-80-330 (& 340)

501-6.0 RESPONSIBILITY

The division director, operations manager, and licensing administrators shall be responsible for ensuring compliance with this standard operating procedure, which applies primarily to inspectors, the adverse enforcement program consultant, and the program support tech for adverse enforcement.

501-7.0 INTERPRETATION

The director of the Division of Licensing Programs shall be responsible for interpreting or granting any exceptions to this standard operating procedure.

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501-8.0 **SUPERSEDES:** SOP-401, January 2003

501-9.0 **EFFECTIVE DATE:** May 20, 2005

501-10.0 **REVIEW DATE:** Two years from the effective date.

Reviewed and Approved by:

Carolynne H. Stevens, Director
Division of Licensing Programs

Date: May 12, 2005

SANCTION RECOMMENDATION MEMORANDUM

Facility: _____ File #: _____

Licensee: _____

Address (include mailing address if different from facility address): _____

Inspector: _____ Date Submitted: _____

Sanction approved by: _____, Licensing Administrator Date: _____

Current License Category: _____ Expiration Date: _____

Type of Inspection(s): _____ Date(s): _____

Relevant standards/code sections violated	Assessed risk level

(attach extra pages as necessary)

SANCTION(S) RECOMMENDED (include duration if applicable): _____

EXPLANATION (attach extra pages as necessary):

Specific facts leading to recommendation: _____

License/compliance/sanction history within past 24 months: _____

Has licensee implemented corrective action to ensure future compliance? _____ yes _____ no

If yes, what action? _____

Are any relevant violations repeats within past 24 months? _____ yes _____ no

If yes, which ones? _____

When did they occur previously? _____

What was licensee's plan of correction? _____

ADDITIONAL RELEVANT INFORMATION: _____

If the following type of sanction is recommended, answer all applicable questions:

Reduction of capacity/prohibition on new admissions: can the licensee make necessary corrections to achieve compliance with regulations without a temporary restriction of its scope of service (Va. Code § 63.2-1709(D)(2))?

_____ yes _____ no

Explanation: _____

Mandated training: did the lack of such training lead directly to violations of regulations (Va. Code § 63.2-1709(D)(4))?

_____ yes _____ no

Explanation: _____

Attach all applicable relevant supporting documentation: _____ cumulative history
_____ violation notice(s) _____ inspection summary(ies) _____ complaint report(s)
_____ notes of inspection/investigation _____ copies of correspondence
_____ supplemental sheets